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Public Defender Commission

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Counties See Secondary Benefits of Commission Program Participation

The Commission staff has been working on a variety of projects in order to determine potential secondary benefits of Commission membership. These benefits are secondary in the sense that they are not directly related to improved public defense, but are potential downstream benefits associated with improved public defense. The results presented here are associations with Commission membership as it currently stands.



Commission counties have 16% lower jail population after controlling for population and arrest rate.



Recidivism Risk of Offenders Sent to Prison: Rate of “low” recidivism risk (as measured by Indiana Risk Assessment System) prisoners in DOC facilities is 20% lower in Commission counties.



Children in out of home care due to CHINS proceedings are kept in foster care for a 9% (50 days) shorter time period in Commission counties than non-Commission counties.



15% higher rate of appeals relative to population in Commission counties as compared to non-Commission*

**Requires additional data to be confirmed with statistical precision*

Late Submission Penalties In Effect

Per Commission guidelines, penalties may be assessed to late submissions.

“12/15/05 (Amended Guideline) To be eligible for maximum reimbursement, claims in non-capital cases must be received by the Commission not later than forty-five (45) days after the end of the calendar quarter in which they were incurred. Claims received 1 to 10 days later than 45 days after the end of the calendar quarter will be penalized 10% of the maximum eligible reimbursement. Claims received 11 to 20 days later than 45 days after the end of the calendar quarter will be penalized 25% of the maximum eligible reimbursement. The Commission will deny all late claims received more than 65 days after the end of the calendar quarter.”

Do I need to overnight my reimbursement request?

Overnighting, certified or express mail is not necessary. If your submission is near the due date and you’re worried about a timely submission, please email the files (preferably in the Excel format) to information@pdcom.in.gov and mail the hard copy of Form V (Verifications page) via regular USPS.

What if I can’t timely obtain signatures?

Please contact staff if you are unable to obtain the required signatures on Form V prior to the deadline.

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How Did We Get Here? Why Indiana Counties Bear the Cost of Public Defense

Indiana has long wrestled with the issue of what governmental body should pay for public defense. In 1854, the Indiana Supreme Court considered the case of Webb v. Baird, 8. Ind. 13 (1854), in which the court determined that an attorney who had been appointed to represent a defendant would not be required to work for free. The Court found that “just compensation” was required.

However, the question of whether an attorney can be forced to work for free is different from who will foot the bill for that expense. Indiana’s judicial system is county-based in many aspects: judges, prosecutors, and probation departments are all organized by county. Elected prosecutors and elected judges are state-paid positions, but nearly every other aspect is paid for by the county.

After determining that the attorney would not be required to work for free, the court concluded that the payment should arise from the county treasury. However—the question then arose—what if there was not enough funding to cover all the expenses in the county coffers?

In 1899, the Indiana legislature passed the County Reform Law. This law was passed to protect counties from being required to pay any amount for appointed counsel beyond what the county appropriated for that purpose. If a lawyer was appointed pro bono and the court had run out of funds, there was no way for that attorney to collect payment for his or her services.

However, there was a subsequent legal challenge to this law, and the Indiana Supreme Court found the County Reform Act to be unconstitutional in Knox Co. Council v. State ex rel. McCormick, 217 Ind. 493 (1940). In a powerful passage, the Supreme Court determined that limitations of funding could not override the right to counsel:

“The conclusion seems unavoidable that it is the duty of courts to see that criminal cases are tried; that these cases cannot be legally tried unless the defendant, if he is a pauper, is provided with counsel; that attorneys cannot be compelled to serve without compensation; and therefore that, in order to conduct a legal trial, the court must have power to appoint counsel, and order that such counsel shall be compensated if necessary; and that the right to provide compensation cannot be made to depend upon the will of the Legislature or of the county council.”

It was therefore clear that trial judges could not only appoint counsel, they could also mandate that funds be dispensed to pay the attorneys when necessary.

Knox County Council was decided in 1940, and for nearly seventy-eight years this principle has remained the status quo of the land. The subsequent development of the Public Defender Commission and the reimbursement program was designed to relieve counties from part of the burden of providing this constitutional right. However, counties have multiple responsibilities to provide constitutionally-mandated services beyond just public defense. The Indiana Task Force on Public Defense is reviewing this history as it considers what reforms can better help counties maintain home rule while also improving the quality of public defense services through increased funding at the state level

Commission Requests Public Comment

Instead of a Standard Spotlight Article, we are specifically calling for public comment by July 13 to derrick.mason@pdcom.in.gov on the following standard:

“COMPENSATION OF SALARIED OR CONTRACTUAL PUBLIC DEFENDERS. The comprehensive plan shall provide that the salaries and compensation of full-time salaried public defenders shall be the same as the salaries and compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney. The compensation of contractual public defenders shall be substantially comparable to the compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney. In counties that have established a county public defender office, the salaries and compensation provided to the chief public defender and deputy chief public defender shall be the same as provided to the elected prosecutor and the chief deputy prosecutor in the county under I.C. 33-39-6-5.”

Commission Guidelines to Standard G indicate that if there are no comparable deputy prosecutor positions then \$30,175 for part-time and \$60,350 for full-time salaries or contracts are to be used. If an alternate number less than \$60,350 is used, the

correlating % of caseload will be assigned (i.e., a contract of \$45,260 would allow a 75% of full-time caseload).

This standard is under review right now

a questionnaire regarding their county’s pay parity including how they believe they are achieving compliance that is due the first week of July. This will be helpful and educational for us.

But we want to know more. Should the flat standard alternative salaries when there is no parity be changed? What should classify full-time? When should benefits such as PERF or health insurance be triggered in the value of a contract (i.e., if a contractor can handle 60, 75, or even 100% of a full-time caseload – at what point is health insurance absolutely required, if ever)? These are questions that need more clarity so that attorneys are properly compensated for their work while acknowledging local pay standards vary from county to county.

There are many other questions that tackle the issues of pay parity for salaried, and especially, contractor public defenders. We are asking YOU what should the standard and accompanying guidelines be? If we receive your comments in a timely fashion, they will be provided at the July subcommittee meeting. If you wish your comments to remain anonymous, please let me know that as well and I will report that as such.

Don’t miss this opportunity to share what is happening in your county, what needs to be happening, or what you wish was happening with pay and status as full and part-time.



Task Force to Create Report on Public Defense

After conducting a survey with over 500 respondents, embarking on a five-city listening tour, and interviewing several national legal experts, the Task Force are presenting to the Indiana Association of Counties to raise awareness about the Task Force work.

The first draft of the report has been written and is currently being deliberated by the members. The final version of the report will be presented to the Commission in August of 2018.

All documents and materials from the Task Force are available on the Commission website, at <https://www.in.gov/publicdefender/2333.htm>. The Task Force has amassed a great deal of material on the website that is useful in understanding best practices in public defense as well as an overview of the history of public defense reform in Indiana and nationwide. While the official period for commentary has closed, the Commission invites you to contact Kathleen Casey at Kathleen.casey@pdcom.in.gov if you have any questions about the process.

This Task Force was created by the Commission in response to the report released by the Sixth Amendment Center, which found systemic deficiencies in the current public defense structure in Indiana. The Task Force is looking at reforms that will recommend changes at the county level, more oversight at the Commission level, and increased funding to better support the front-line public defenders providing services every day. Representatives from

Indiana Supreme Court Announces Pay Increase for Prosecutor and Deputy Prosecutor Positions

According to Standard G, Chief Public Defenders and Deputy Chief Public Defenders in counties with offices must be compensated at the same rate as the elected prosecutor. Counties have until January 2019 to match the pay raises prosecutors received on 7/1/18. Please contact Commission staff with any questions.

Prosecutor Salary Table Effective July 1, 2018

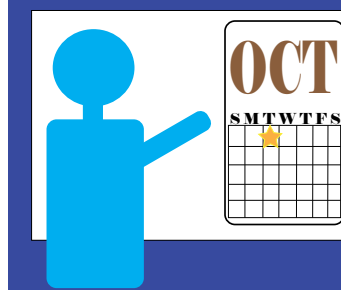
Full-Time Prosecutor	\$147,164
Part-Time Prosecutor (.66)	\$ 97,128
Part-Time Prosecutor (.6)	\$ 88,298
Full-Time Chief Deputy	\$110,373
Part-Time Chief Deputy (.66)	\$ 72,846
Part-Time Chief Deputy (.6)	\$ 66,224

Subcommittee Membership and Update

The Commission has convened a Subcommittee to consider changes to our standards and guidelines. The membership of the Subcommittee includes Commission members as well as representatives from Commission counties who currently work in the field and manage public defender offices. Mark Rutherford (Chair, Public Defender Commission), Ashley Spolarich (Tippecanoe County), David Shireliff (Lawrence County), Sheryl Pherson (Cass County), Ray Casanova (Marion County), Jason Pattison (Jefferson County), and the Hon. Kelsey Hanlon (Public Defender Commission).

The first issue considered is pay parity. This is a difficult issue for every county, because parity means something different in each context. Creating a rule that treats each county equally while understanding the differences in cost-of-living and responsibilities that may differ between different attorney positions. See above request for public comment. Please submit your comments to Derrick.Mason@pdcom.in.gov by July 13 in order to be presented at the July subcommittee meeting.

Save the Date!



Mark your calendars! The 2018 Public Defender Commission Annual Training will take place on October 2, 2018. The training will be held at our office in Indianapolis. This will be an all day event. Lunch and light refreshments will be provided. Look for more information to be sent out in the coming months.

Is there a topic you’d like covered? Let us know! Send your requests to: information@pdcom.in.gov.

June Meeting Update

The June 13, 2018 meeting of the Public Defender Commission was held at the PDCOM offices at 309 West Washington Street, Indianapolis, IN 46204. These meetings are open to the public and you are invited to observe. The following are a list of topics discussed by the Commission at the meeting:

The Supreme Court of Indiana has raised the full-time prosecutor and chief deputy prosecutor pay; at this meeting the Commission voted to raise the chief public defender pay to match that salary. The Commission voted to make these salaries effective in January of 2019 in order to allow the counties time to come into compliance on this issue.

The Commission approved Comprehensive Plans from Clinton and Fulton Counties. During the approval of these plans, the Commission emphasized the need for the public defender boards to ensure independence of the attorneys practicing in their counties' courtrooms.

Mr. Mason reported that the Commission remains able to meet all of its obligations for the biennium.

The Commission now approves an internal budget for the staff of the Commission to ensure monitoring of expenses and overhead. The overall amount of operating expenses remains at 3%, well below most standards for operating expenses.

As part of their responsibility to ensure effective oversight, the Commission has requested that Derrick Mason create a set of staff goals and evaluate staff members to ensure quality performance. Mr. Mason will be presenting these goals to the Commission in the December meeting.

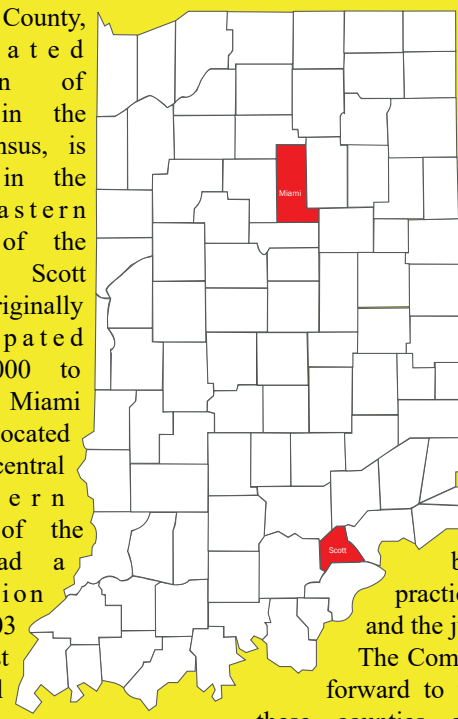
Every two years, the Commission must submit a budget to the legislature and advocate for funding for the next biennium. As part of the Indiana Task Force on Public Defense, a set of recommendations will be presented to the Commission. The Commission will then decide which priorities to take up and advocate for at the legislature. At the June meeting the Commission directed Mr. Mason to submit both a baseline budget as well as a proposal that would include funding for some of the reforms proposed by the Task Force.

The Commission will hear the proposals from the Task Force on August 22nd, from 2 p.m. to 4 p.m.

Scott and Miami County Rejoin the Commission

The Commission welcomes have both opted to employ a back to the reimbursement Chief Public Defender to oversee program two counties who services in their counties. The previously left the program. employment of a Chief Public Defender is truly a best practice as it ensures that there is a local provider that is able to answer questions from community members and address issues that may arise in court between practicing counsel and the judiciary. The Commission looks forward to working with these counties and enjoying record participation in the reimbursement program!

Scott and Miami Counties Welcome back!



2018 Commission Meeting Dates

September 19
December 12

All meetings are scheduled to begin at 2 pm. A brief executive session may precede each meeting. Meetings are scheduled to be held at our offices (309 W Washington Street, Suite 501, Indianapolis, IN 46204)

Updates to meeting dates, times and locations are posted on our website: www.in.gov/publicdefender



Commission Sets Special Meeting

In order to evaluate the Report from the Task Force on Public Defense, the Commission is holding a special session on August 22, 2018 at 2 pm. The meeting will take place in our offices, located at 309 W Washington St., Suite 501, Indianapolis, IN 46204. As always, the public will be welcome.



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